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Frank Stilwell

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**From:** John Fowler [jfowler@achp.gov]  
**Sent:** Thursday, February 19, 2004 10:22 AM  
**To:** Clark, John F. - WDC

ORIGINAL

Federal Communications Commission  
Office of the Secretary

**Cc:** Sheryl Wilkerson; John Muleta (E-mail); Amos Loveday; Jeffrey Steinberg; Frank Stilwell; Robert G. Howarth (E-mail); Vince Sampson (E-mail); esanderson@preservation.ni.gov; schamu@ncshpo.org

**Subject:** Re: Negotiations on the NPA

I am deeply disturbed by your February 18 e-mail to Sheryl Wilkerson of the FCC. When you and I talked on the phone that same afternoon, you told me that you felt we were not that far apart on revisions to the PA. However, your e-mail takes an entirely different position (e.g., "...some points of agreement were reached, but, as of the last meeting on Tuesday two days ago, much remained to be done to fashion a complete agreement."). This is certainly the opposite of what you said to me on the phone.

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You go on to express dismay that issues other than the identification issue were being addressed. As I noted, the public comment period for the Nationwide Programmatic Agreement (NPA) was not simply for the benefit of the FCC. We, the ACHP, are required to seek and consider public comments in developing PAs and are obligated to take such comments into account when reaching a final decision on the content of a PA. That is why we have proposed certain changes in other parts of the NPA. Likewise, dealing with the identification issue and the tribal consultation issue required adjustments in other parts of the NPA.

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We both agree that this negotiation process has been hampered by the FCC's insistence on doing a rulemaking and applying restrictions to access by parties other than the ACHP and NCSHPO to the revised NPA under consideration by the FCC. Nevertheless, it had been my impression that we were making significant progress in resolving the outstanding issues, most notably the identification requirements for visual impact areas. Apparently you now disagree.

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I will be discussing this with the ACHP chairman today and will brief him on the state of our negotiations. He will decide what the ACHP will report to the FCC today. I welcome any further clarification of industry's position that we should consider in that decision. John

Clark, John F. - WDC wrote:

Dear Sheryl:

On January 21, 2004, members of the wireless and broadcast industry met with you to request a delay of one month in the Commission's consideration of the order that will adopt a Nationwide Programmatic Agreement for Section 106 historic preservation review for FCC projects ("NPA"). We made that request for the purpose of working with the Advisory Council on Historic Preservation ("ACHP") and the National Conference of State Historic Preservation Officers ("NCSHPO") to try to agree on language to be added to the NPA to limit consideration of visual effects to potentially eligible properties.

Since that time, negotiations with ACHP and NCSHPO, together with representatives of several Indian tribes and the cultural resources

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consultant industry, have been conducted under the auspices of the ACHP and the Telecommunications Working Group ("TWG") that the ACHP originally formed to help craft the NPA. The ACHP and industry independently developed proposed language to effectuate the goals of the negotiation. Meetings and conference calls were held on January 29, and February 6, 12 and 17 to discuss this issue. As a result of these efforts, some points of agreement were reached, but as of the last meeting on Tuesday two days ago, much remained to be done to fashion a complete agreement.

Yesterday evening, Charlene Vaughn of the ACHP submitted to the TWG Drafting Committee a new revision of the ACHP proposal for amendments to the NPA. This new ACHP proposal was surprising to us, because it contained many revisions to key terms and provisions in the NPA that had not previously been discussed. In our view, these changes went far beyond the limited issues we asked the Commission for time to resolve.

We understood that the Commission would only allow time for these negotiations to no later than tomorrow, February 19, 2004. The number and scope of the changes proposed by ACHP, however, many for the first time, seek to change crucial, foundational terms and myriad aspects of the NPA that we find ourselves unable to address. Despite our own concerns about particular provisions of the NPA, we do not believe that it would be appropriate for industry to initiate consideration of these changes proposed by the ACHP, as you and others have indicated to us that the Commission, ACHP and NCSHPO otherwise had long ago reached agreement on these terms for the final version of the NPA.

We have attached a critique of the latest ACHP proposal that highlight some of our concerns. We thought a few weeks ago that the parties were close to an agreement, but it appears that in some important ways ground has been lost since then.

The members of our Coalition are disappointed that these negotiations could not produce an agreement on the narrow issues for which we requested an extension of time. Industry developed a proposal that would have achieved that goal, without making major changes to the other sections of the NPA, but this proposal was not discussed in any detail in the meetings of the TWG Drafting Committee. A copy of our original proposal is also attached.

We want to again express our support for the Commission's efforts to streamline and improve the Section 106 process for telecommunications and broadcast projects, and our willingness to assist in achieving that goal. In that regard, we hope that these negotiations have not been completely in vain.

Very sincerely,

The Wireless Coalition to Reform Section 106

AT&T Wireless Services, Inc  
American Tower Corporation  
Cingular  
PCIA  
Sprint Corporation  
T-Mobile USA  
Verizon Wireless

John Clark  
PERKINS COIE LLP  
Counsel  
607 14th Street NW Suite 800  
Washington, D.C. 20005-2011  
[clarq@perkinscoie.com](mailto:clarq@perkinscoie.com)  
Voice - 202.434.1637  
Fax - 202.654.9116

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